Acme Die Casting, a Division of Lovejoy Industries Incorporated and United Electrical, Radio & Machine Workers of America (UE). Case 13– CA–30006

September 30, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On April 1, 1993, Administrative Law Judge Walter H. Maloney issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, ¹ and con-

¹The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent also has excepted to the judge's decision asserting that it evidences bias and prejudice. On our full consideration of the entire record in these proceedings, we find no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated impermissible bias against the Respondent in his analysis and discussion of the evidence.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by unilaterally subcontracting drilling work and relocating a machine used to perform the work to the premises of the subcontractor, we also rely on Brown-Graves Lumber Co., 300 NLRB 640 (1991), enfd. 949 F.2d 194, 197-198 (6th Cir. 1991). Contrary to the Respondent's contention, the reasoning of Torrington Industries, 307 NLRB 809 (1992), is not limited to situations in which employees are laid off or replaced. Torrington simply recognizes the principle, applicable in this case, that an employer's decision to subcontract is a mandatory subject of bargaining when what is involved is the substitution of one group of workers for another to perform the same work, and not a change in the scope and direction of the enterprise. There is no evidence that the decision to subcontract constituted a change in the scope and direction of the Respondent's business. Indeed, the plant manager admitted that the subcontracting permitted the Respondent to perform work of the same type done by unit employees in the past while avoiding paying overtime to those employees.

Member Cohen does not read *Torrington* as broadly as his colleagues. In his view, subcontracting is a mandatory subject where one group of employees is substituted for another *and the decision is based on matters that are amenable to collective bargaining*. In the instant case, the evidence indicates that the Respondent subcontracted because it was less expensive to do so than to perform the work in-house on an overtime basis. There is insufficient evidence to establish the Respondent's claim that the subcontracting was necessitated by a customer's special needs which could not be met by use of the Respondent's single machine.

We grant the Respondent's exception to the judge's finding that the drilling machine was not used for Admiral work after it was returned by the subcontractor to the Respondent's plant. The record shows that unit employees continued to produce Admiral hinges in clusions as modified and to adopt the recommended Order as modified.

We agree with the judge that the Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally granting a general wage increase, but we do so for the following reasons.

The Respondent and the Union were engaged in protracted negotiations for an initial collective-bargaining agreement when, in early November 1990, the Union proposed, as a separate matter, that the Respondent grant a three-tiered "interim" wage increase while negotiations continued. Although the Respondent initially rejected the Union's proposal, in late November 1990 it offered to consider implementing "a negotiated interim wage increase" in return for certain promises by the Union. The Union rejected that proposal and, in late December, the Respondent offered what it called an "annual" increase ranging from 15 cents per hour for the lowest paid employees, to 20 and 25 cents per hour for higher paid employees. The Union made a counterproposal on wage amounts, that was slightly reduced from its initial demand, although greater than the Respondent's offer; and the Union also insisted that it be deemed an "interim" increase. The Respondent agreed in concept with distributing an annual increase to narrow the disparate pay levels within labor grades but held to its proposed amount of 15, 20, and 25 cents.

On January 15, 1991, the Respondent informed the Union that it intended to implement its late-December offer (which it then had characterized as an "annual" increase) retroactive to January 3. The Union did not agree to this because it regarded the amounts as still too low, but it sought further information about which particular employees would be included in which of the three pay-increase groups. Nonetheless, on January 16 the Respondent announced to employees the grant of an "interim" wage increase. It also announced that employees having less than 90 days of employment with the Respondent would not receive the increase.

The judge found that there was no evidence that a 90-day exemption from the interim increase had ever been proposed or discussed during the parties' negotiations. Further, the judge rejected the Respondent's contentions that the Union had consented to the increase or, in the alternative, that the parties were at impasse when the Respondent implemented the increase. Based on the foregoing, he found that the Respondent violated the Act by unilaterally granting the January across-the-board increase.

In its exceptions regarding the 1991 general wage increase, the Respondent characterizes that increase as being in keeping with a "pattern" of January in-

April and May 1991. This fact does not change the result, since the violation had already occurred before the drill was returned.

creases, and observes that in Acme Die Casting,2 it was found "to have violated the Act by discontinuing this practice." By implication, the Respondent seems to be suggesting that we are now unfairly finding a violation on the basis of an action that the Respondent earlier was found in breach of the law for failing to take. The Respondent also repeats its contentions that its implementation of the increase was lawful because the Union consented to it or at least that the parties were at impasse when the Respondent implemented it. We agree for the reasons stated by the judge that the Union had not consented to the particulars of this increase. Because the judge did not discuss the impact of the order in the earlier case, however, and because, with respect to the impasse issue, we do not agree with the suggestion in the judge's opinion that, given the Respondent's "history" of 8(a)(5) violations in the earlier cases, it would have been impossible for the Union and the Respondent to reach impasse on any interim wage increase, we provide the following reasons for adopting the finding that implementation of the January 1991 increase violated Section 8(a)(5) and (1) of the Act.

The Respondent is correct in its suggestion that granting an across-the-board wage increase in 1991 was consistent with both its past practice and with the Board's Order in *Acme III*; and our finding of a violation is in no way predicated on the mere fact that the Respondent granted an increase. The violation lies in the Respondent's abrupt implementation of the increase at a time when there was neither agreement nor genuine impasse, and in the fact that the increase the Respondent granted differed from the last proposal that was on the table before implementation.

The Respondent does not dispute the proposition that it had a statutory obligation to bargain over the amounts and distribution of the wage increases it proposed to grant to all the unit employees. Indeed, it was proceeding to fulfill this obligation during the winter of 1990-1991, and the parties' positions were gradually moving towards each other. By January 9, the parties had agreed on the concept of a three-tiered wage increase structure; the Respondent had finally agreed that this would be an interim increase, with bargaining open as to wage levels to be set in the ultimate collective-bargaining agreement on which the parties were meeting; and the Union had slightly reduced the level of the highest of three increases it sought. As noted above, at the January 15 meeting, the Union indicated it still viewed the Respondent's proposed amounts as too low, and it sought information on which employees would be within which of the three pay raise groups under the Respondent's plan. On January 16, the Respondent abruptly implemented its own plan with a notice to employees that the increase was retroactive to January 3.

In arguing its "alternative" theory that, if the Union cannot be deemed to have consented to the Respondent's wage increase proposal on January 15, then the parties must have been at impasse, the Respondent states a correct legal standard for impasse, i.e., whether under all the circumstances it is clear that further bargaining on the issue would be "futile." But the facts, even as recited by the Respondent, show no such state of affairs on that date. The Respondent points to no statements from union negotiators that there was no possibility of any further movement on the Union's part, and, indeed, the Union's request for information about how particular employees would be affected by the Respondent's plan indicated that the Union would give it consideration. Furthermore, the Respondent has presented no evidence that the announcement and grant of an increase could not wait even a week or two longer. The Respondent's proffered business reason for raising its employees' wage rates at this time—that it "had learned of considerable unrest among the employees with respect to a 1991 wage increase," and it had reason to believe that the employees "had grown accustomed to a regular January increase" certainly does not establish any emergency circumstances that would warrant effectively calling a halt to negotiations on this issue and proceeding with implementation.³ In sum, the Respondent has not established its impasse defense, and its implementation thus violates Section 8(a)(5) and (1) on a theory of unilateral action in the absence of a bargaining impasse.

As noted above, we also agree with the judge that implementation of the increase was unlawful because it was not consistent with the Respondent's last proposal, in that the increase announced to the employees came with the caveat that "this does not apply to those employees with less than 90 days of employment at Acme Die Casting"—an exemption that was never part of the proposal that the Respondent put on the bargaining table. It is settled that even when impasse is reached on a subject, an employer's subsequent implementation cannot vary from its final preimpasse proposal.⁴

The Respondent's contention that the 90-day exemption was in fact included in its proposal rests on two separate theories, neither of which has merit. First, the Respondent suggests that the proposal implicitly included the 90-day exemption because such an exemption represented the "past practice" from which changes were to be measured. In support of this claim, the Respondent put in evidence a memorandum to employees dated December 4, 1989, in which it had an-

² 309 NLRB 1085 (1992), remanded 26 F.3d 162 (D.C. Cir. 1994) (*Acme III*).

³ Cf. Bottom Line Enterprises, 302 NLRB 373, 374 (1991). Member Cohen finds it unnecessary to rely on Bottom Line Enterprises.

⁴See, e.g., Triple A Maintenance Corp., 283 NLRB 44, 56 (1987).

nounced a general wage increase with a 90-day-employee exemption, which was thereafter implemented on January 4, 1990. But that increase was part of a long pattern of usually semiannual, sometimes annual, general wage increases; and that one-time feature of the 90-day exclusion no more established a past practice than did the particular amounts that were given on that occasion.

Second, the Respondent contends that the 90-day exemption was in fact a component of its interim wage increase proposal because a proposal for a 90-day probationary period was on the table at the same time and had been the subject of negotiations, although the parties had not reached agreement on a probationary period clause.5 The Respondent therefore contests the judge's finding that there "is no record evidence that any exemption from [the interim wage] increase pertaining to employees with less than 90 days of service had ever been proposed or was ever discussed at any bargaining session." We see no conflict between the judge's finding and the evidence of negotiations on the probationary clause. There is no evidence whatsoever of any expression by the Respondent's negotiators of an intent to link the probationary period in the proposed collective-bargaining agreement to the interim wage increase that was given before any such agreement was executed or even reached. This would have been an easy linkage to make: In the Respondent's announcement of the increase to employees, it was accomplished in a single sentence.

In sum, we find that because the January 1991 wage increase was implemented in the absence of a bargaining impasse and in a form that diverged from the Respondent's last proposal prior to implementation, it violated Section 8(a)(5) and (1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Acme Die Casting, a Division of Lovejoy Industries Incorporated, Chicago, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

- 1. Substitute the following for paragraph 1(b).
- "(b) Unilaterally changing the terms and conditions of across-the-board or merit wage increases to bargaining unit employees; provided that nothing here shall be deemed to require the Respondent to cease giving ef-

fect to any wage increases of any kind that it has granted heretofore."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally subcontract bargaining unit work or unilaterally transfer to subcontractors machinery used in performing bargaining unit work.

WE WILL NOT unilaterally change the terms and conditions of across-the-board or merit increases to bargaining unit employees. However, WE WILL NOT rescind any wage increases of any kind that we have previously given.

WE WILL NOT refuse to recognize or bargain collectively in good faith with United Electrical, Radio & Machine Workers of America (UE) as the exclusive collective-bargaining representative of all the full-time and regular part-time production and maintenance employees employed at our Northbrook, Illinois facility, excluding office clerical employees, technical employees, tool and diemakers, professional, managerial and confidential employees, guards, and supervisors as defined in the Act.

WE WILL NOT, by any other means or in any other manner, interfere with, restrain, or coerce employees in the exercise of rights guaranteed to them by Section 7 of the Act.

WE WILL recognize the Union on resumption of bargaining in good faith and for 1 year thereafter as if the initial year of certification had not expired.

WE WILL recognize and, on request, bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of the employees in the above-designated bargaining unit.

WE WILL make whole employees for any loss of pay or benefits suffered by them by reason of the unlawful subcontracting found here, with interest.

ACME DIE CASTING, A DIVISION OF LOVEJOY INDUSTRIES INCORPORATED

Richard Kelliher-Paz, Esq., for the General Counsel.

Larry G. Hall, Esq., of Chicago, Illinois, for the Respondent.

Terry Davis, Field Organizer, of Chicago, Illinois, for the Charging Party.

⁵On this point the Respondent relies on the testimony of the Union's field organizer, Terry Davis, that during the parties' protracted contract negotiations "the whole issue of 90 days was the subject of considerable difference between the company and the union . . . because there was currently a 30 day probationary period. The company was proposing a 90 day probation period and we were not accepting that."

DECISION

STATEMENT OF THE CASE

WALTER H. MALONEY, Administrative Law Judge. This case came on for hearing before me upon an unfair labor practice complaint, issued by the Regional Director of the Board's Region 13, which alleges that Respondent Acme Die Casting, a Division of Lovejoy Industries Incorporated² violated Section 8(a)(1) and (5) of the Act. More particularly, the complaint alleges that the Respondent unilaterally subcontracted out the work of drilling holes in certain hinges which the Respondent was manufacturing and transferred to the subcontractor the drilling machine used in this process; that it unilaterally granted a wage increase to bargaining unit employees before arriving at impasse in bargaining; and that it unilaterally granted merit increases. The Respondent presented an array of defenses. It claimed that its unilateral subcontracting unit work was justified in that it was in accordance with past practice, was de minimis, and did not result in any loss of pay or jobs for unit employees. To the allegation respecting unilateral increase in wage rates on January 3, 1991, the Respondent argues either that it was at impasse with the Union or that the Union had consented so it was entitled to institute the increase in question. It denies that three merit increases litigated in this proceeding were in fact merit increases and argues that it was entitled to grant them in accordance with its past practice. In these contentions, the issues in this case were drawn.3

FINDINGS OF FACT

I. THE UNFAIR LABOR PRACTICES ALLEGED

A. Background

The Respondent operates a factory in suburban Chicago where it manufactures a variety of die casted parts to fill the particularized orders of its customers. At the time the events in this case took place, it employed about 100–120 employees in a production and maintenance bargaining unit. In the ensuing years, this unit has grown to about 175 people.

The Respondent is no stranger to the processes of the Board.⁴ On October 16, 1987, this Union won a representa-

tion election among the employees in the Respondent's production and maintenance bargaining unit. The fairness of the election was challenged by the Respondent but its challenge was so insubstantial that the Regional Director and the Board dismissed it without a hearing and certified the Union on April 13, 1988. The Respondent refused to bargain so a complaint was issued and the Respondent was found guilty, in a summary judgment proceeding, of an unlawful refusal to bargain. 290 NLRB No. 127 (Aug. 31, 1988) (not reported in Board volumes). The Board's Order, including its initial refusal to grant the Respondent a hearing on its objections to the conduct of the election, was upheld by the Seventh Circuit. 904 F.2d 937 (1990) (Acme II). While Acme II was in various stages of its protracted progress, the Respondent committed, and was found guilty of, an ongoing series of unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act. (Acme III.) These violations included threats to cancel established wage increases, withholding twice-yearly general wage increases from employees, issuing unlawful written warnings, unlawfully suspending employees, and unilaterally changing several working conditions at the plant. These latter violations included changing certain plant practices in effect at the time of the election which included permitting employees to start their cars during cold weather before the end of their shift; permitting employees to warm food in cafeteria microwaves before breaks and before lunchtime; permitting employees to bring coffee and similar items to their work stations; and permitting employees free access to restrooms without first giving notice to their foremen. Acme III was before the Board at the time of the hearing in this case (Acme IV) and resulted in a decision which was issued by the Board on December 16, 1992. (309 NLRB 1085.) 5

B. Events in Late 1990 and Early in 1991

Unilateral transfer of drilling machine to a subcontractor

After the Seventh Circuit enforced the Board's bargaining order in a decree, dated July 14, 1990, the parties began to engage in collective bargaining. A total of about 35 sessions took place, most of them in 1990 and early 1991. To date, no contract has been concluded.⁶

One controversy litigated in this case involved two die cast hinges manufactured at that time by the Respondent for the Admiral Corporation for use in fastening doors to the frames of refrigerators. According to Peter Balma, who was then the manager of the plant, the fabrication of this item was only a minor part of the Respondent's production schedule.

¹ The principal docket entries in this case are as follows:

Charge filed by United Electrical, Radio & Machine Workers of America (UE) (the Union) against the Respondent on January 28, 1991; complaint issued by the Regional Director for Region 13 against the Respondent on May 16, 1991; the Respondent's answer filed on May 21, 1991; hearing held in Chicago, Illinois, on October 1 and 2, 1992; briefs filed with me by the General Counsel, the Charging Party, and the Respondent on or before November 2, 1992.

² The Respondent admits, and I find, that it is a corporation which maintains an office and place of business at Northbrook, Illinois, where it is engaged in the custom manufacture of zinc and aluminum die castings. In the course and conduct of this business, the Respondent annually ships from its Northbrook, Illinois facility directly to points and places outside the State of Illinois goods and materials valued in excess of \$50,000. Accordingly, the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act.

³ Certain errors in the transcript have been noted and corrected.

⁴During an earlier era, in its dealings with another labor organization, the Respondent was found guilty of discriminatorily discharging

an employee during an unsuccessful organizing campaign. *Acme Die Casting Corp.*, 262 NLRB 777 (1982), enforced with slight modification 728 F.2d 959 (7th Cir. 1984) (*Acme I*).

⁵ A 26-day hearing in *Acme III* took place throughout 1989 before Administrative Law Judge Richard J. Linton upon a complaint consolidating five different charges. Judge Linton's decision in that case was issued on May 23, 1991, and necessarily formed a part of the background in this case.

⁶A total of four bargaining sessions took place in June and December 1991. As of the date of the hearing in this case (October 1992), no further meetings were scheduled.

The parts in question—known on invoices and other company documents as Admiral parts 67,772 and 67,773—were made of a zinc aluminum alloy called ZA-27. The hinges in question were 2-1/2 inches by 2-1/2 inches and contained two holes for the insertion of bolts fastening them to the frame. Each hinge was produced by melting the alloy in a furnace and pouring it into the die cast machine. After the metal hardened, it was trimmed in a trim press. Following the trimming, two holes were drilled in the hinge by a drill which was especially constructed for this purpose by the Respondent in its maintenance department. Drilling work was done in department 25, known as the secondary department, although other facets of hinge production were completed in other departments. It was this drill and the drilling operation which became an issue between the parties late in 1990.

The drill in question was basically a table to which were affixed two spindles holding drill heads pointed in opposite directions. An operator pressed two buttons which activated the drills and made two holes—one square and one round in the hinge. After the drilling operation was completed each hinge was subjected to a vibratory process which removed shape edges. The hinge was then washed and sent out of the plant to be painted by a subcontractor known as OC Power. The item was then returned to the plant, boxed, and shipped to the customer. An operator could normally drill 250-275 hinges in an hour.7 The production of this item was not an assembly line process. Quantities of hinges were completed at each phase of the process and then sent to the next step for further work. Production of hinges could be interrupted at any point so that employees could be shifted to work on other assignments which were more urgent. During the 3 months preceding the disputed events in question, approximately six employees were assigned from time to time to perform the drilling operation on Admiral parts 67,772 and 67,773.8 Since there was only one drill in the plant which had been adapted to this part, only one employee could work at the drilling operation at any given time. Carlos Bueno was assigned to perform this drilling far more than any other employee. Company records in evidence disclose that, on many workdays preceding the transfer of the machine to an outside contractor, no drilling of Admiral parts was performed at all. On November 10 and 12, no drilling was performed and, on November 13, the day on which the machine was transferred, Bueno drilled 260 Admiral hinges in the course of 1 working hour. On November 13, 1990, the drill was cleaned and shipped to Machined Metals Manufacturing, a company located in the suburban Chicago town of Elk Grove Village. Bueno, who was working on the machine at the time, was transferred to another job. I credit the corroborated testimony of Jorge N. Valenzuela, a member of the Union's negotiating team,9 that a group of employees10 went to see Balma to protest the removal of the drill and asked him why it was being taken out of the plant. Balma told them that it was

cheaper to do the drilling work outside the plant because it avoided overtime.¹¹

Invoices in evidence show that, between November 11 and December 3, 1990, Machined Metals Manufacturing drilled 21,537 hinges for the Respondent at a cost of 8 cents a hinge. About 3000 of these hinges were shipped back to the contractor for redrilling because their initial work was defective. Following the completion of this work, the Respondent performed no more drilling, either in-house or by subcontractor, on Admiral hinges. The machine was eventually returned by the subcontractor to the Respondent's plant late in March or early in April 1991, but it was not utilized for Admiral work thereafter. In August or September 1991, the Respondent lost the Admiral contract and, with that loss, the drilling work at issue herein.

There is no suggestion in the record that the Respondent notified the Union in advance of the transfer of the drilling machine or the drilling work to Machined Metals Manufacturing or that it ever offered to bargain with the Union about the transfer. After learning of the transfer, Terry Davis, the Union's principal negotiator, wrote a letter, dated November 14, 1990, to James Salzman, the attorney who conducted the Respondent's negotiation, protesting the move. In her letter she stated:

Yesterday, one of the drilling machines at Acme Die Casting was removed from the plant. We hereby request immediate negotiations with the Company on the decision to remove the machine and the effects of this decision on our members.

The letter went on to make a detailed request for information. Davis asked Salzman to describe the machine and anything else, such as parts, which was moved with the machine. She further asked what other machines, parts, jobs, or equipment the Company was planning to remove from the plant and the details of when and to where such moves were being contemplated. She also asked details about bringing machines (including the drill in question) back from the premises of subcontractors, and posed several other questions concerning the processing of work performed on relocated machines, the cost of relocation, and any expected impact on unit personnel. The final question in her letter was one of the questions at issue in this case:

Why didn't the Company inform the Union of this move in advance? Why was it not brought up at the negotiating table?

At negotiations on November 19, Davis was presented with a written response keyed to the specific questions in her letter. The Respondent informed her that Admiral hinges and a drill fixture for Admiral hinges had been relocated. It stated further that the Company was contemplating the possible removal of 4000 additional pieces, identified as part 67,773–2, to be drilled by the subcontractor with the same fixture.

⁷The die cast machine could produce hinges at the rate of 360 parts per hour, while the trim machine, located next to the drill, could trim 800 hinges per hour.

⁸Those employees were Carlos Bueno, Eusebio Hernandez, Luis Hernandez, Diego Ortega, Jesus Garcia, and Jorge Valenzuela.

⁹ Valenzuela's discharge was a subject of the complaint in *Acme I* and a warning given to him was litigated in *Acme III*.

¹⁰ The individuals joining Valenzuela in this meeting with Balma were Mauricio Aguire, Antonio Ramirez, and Antonio Aguilera.

¹¹ Balma testified that he was on vacation when the drill was removed and played no part in the decision to remove it. Salzman's bargaining notes for December 5 contain the following handwritten entry: "Pete involved w/decision to send Admiral work out." I discredit Balma's attempt to disassociate himself from the removal controversy.

The reason offered for the relocation at issue was "backlog in die casting and trimming caused parts to be completed late, resulting in insufficient time and manpower available to complete job on premises." The Respondent informed the Union that the machine would be brought back to its plant on completion of the job, which it estimated would consume 56 hours of work if production proceeded at the rate of 250 pieces per hour. To the question of who was performing the work and under what labor conditions, the Respondent replied only that "answers to additional questions being worked on." The Respondent stated that the machine had not been sold, that the drilling work was being subcontracted, and that the first lot of drilled parts was to be delivered to the Company not later than November 21, adding that the work would be further processed at the Respondent's plant and inspected in accordance with its normal quality control procedure. The Union was also told that the subcontractor transferred the machine at its own expense but the Respondent insisted that no hours of work were lost by unit employees on account of this move.

To the question of why the Company had not bargained over the transfer, the Respondent replied:

Instant case does not differ from prior instances of subcontracting work when critical delivery times or similar reasons are necessary. Furthermore, it was anticipated that this action would have no adverse effect on bargaining unit employees' hours of work.

At one negotiating session, Balma admitted that the Company could point to no previous instance of farming out a machine—as distinct from subcontracting work—to a subcontractor. According to Balma, subcontractors normally provide their own machines but, in this instance, it was deemed quicker and cheaper to let the subcontractor borrow the Respondent's drill. In later negotiations, when asked about the present status of the subcontracted drilling work, Salzman told union negotiators that the subcontractor was not doing any further drilling work, even though the drill was still at the subcontractor's plant, because the Respondent did not have any more orders to perform on the drill. Salzman also told them that, when and if additional work became available, the Company would bring the machine back to its plant. Balma informed union negotiators that the work was being performed by the subcontractor at 8 cents per item, as opposed to an in-house cost to the Company of 5 cents or 6 cents per item. He stated that, at the straight time rate, it would be cheaper to perform the work in house but admitted that the same job would be more expensive than subcontracting if the Company had to do the work at overtime rates.

2. The January 1991 wage increase

Early in November 1990, the Union presented to the Respondent at a bargaining session a proposal for an interim wage increase, subject to further modification in a completed collective-bargaining agreement. In the words of Davis, negotiating over wages was "a fairly complex task" because the Respondent did not have in place a conventional wage classification system or standard labor grades, so negotiating over specific rates had to await agreement on these fun-

damental items.¹² On November 10, 1990, the Union proposed that unit employees be grouped into eight classifications, ranging from labor grade 1, the most skilled classification, to labor grade 8 (general factory), the least skilled classification. The proposal grouped all job titles into these pay grades. While the Respondent had no great disagreement in the abstract with this proposal there was never any agreement between the parties as to which employees should fall into which labor grades. 13 Coupled with this proposal was a wage proposal, to the effect that, within each of these eight labor grades, immediate hourly increases should be given in the amount of 25 cents per hour for the highest group of employees within the grade, 50 cents per hour to the middle group within each grade, and 70 cents per hour to the lowest paid employees within each grade. In short, there were, in effect, a total of 24 different increases in the union proposal, the purpose of which was to bring about, over a period of time, a single rate for each labor grade rather than individual rates for more than 100 employees.

Initially the Respondent rejected the whole idea of an interim wage increase pending completion of negotiations. He told union negotiators that the practice of the Respondent was to hire a new employee at \$5 per hour and give him an initial increase of 20 cents an hour and 10-cent increases thereafter until he reached a particular level or was promoted to a new job, but he insisted that the Company did not have a set system of giving wage increases.¹⁴ Late in November, the Respondent presented a formal written proposal by which it would "consider implementing a negotiated interim wage increase" and would proceed to negotiate if the Union would agree to a no-strike proposal for the balance of the contract talks. Not surprisingly, the Union rejected this offer. A month or so later, the Respondent orally offered what amounted to an interim wage proposal of 15 cents an hour for labor grades 1 and 2; 20 cents an hour for grades 3, 4, 5, and 6; and 25 cents an hour for grade 7. It did not want this proposal to be termed an "interim" increase but preferred to call it an "annual" increase. It asked the Union to agree to the proposal as the annual increase for 1991. A few days later, they faxed the same proposal to the Union.

At a bargaining session on January 9, 1991, the Union rejected the proposal because, in its view, it was too little and was bad from the standpoint of the distribution of increases. On January 10, the Union responded with a second proposal for an interim three-tiered increase but for less money (25), 50, and 65 cents). However, it insisted that this proposal be deemed an interim increase. The Company's response was that it would agree, in concept, to distribute its own proposed

¹² In his bargaining notes for December 21, 1990, Salzman indicated that he told the Union that the Company was trying to bring some order to its present wage program because employees were "all over the map." For instance, as die caster, the Respondent's payroll listed 23 individuals who were earning between \$5.50 per hour and \$8.70 per hour. Two employees earned \$8.40, two earned \$7.20, two earned \$6.60. The other 15 die casters all earned different rates within the aforementioned range. In effect, the Respondent had no pay grades, just job titles, and all wages were essentially individually assigned rates.

¹³ Eventually the Company responded with a system which had seven rather than eight pay grades.

¹⁴This is contrary to the finding of Administrative Law Judge Linton and the Board in *Acme II*.

annual increase within labor grades in order to narrow the disparity between individual wage rates in each labor grade.

At the January 15, 1991 bargaining session the Respondent told the Union that it intended to put its proposed increase into effect retroactive to January 3. I credit Davis's testimony that Salzman made this statement as if it were a fait accompli. She did not agree to it. In his testimony at the hearing, Salzman stated that the Union never agreed to his "numbers." On the following day, the Company posted the following notice, signed by Company President Robert J. Novak:

To: Factory Hourly Employees

The Company is pleased to announce an interim wage increase to be effective January 2, 1991.

This does not apply to those employees with less than 90 days of employment at Acme Die Casting.

A copy of this notice was then sent to Davis by Salzman. There is no record evidence that any exemption from this increase pertaining to employees with less than 90 days of service had ever been proposed or was ever discussed at any bargaining session.

3. Merit increases

The General Counsel challenges wage increases given directly by the Respondent, without undergoing the formalities of collective bargaining, to the Villalpandos (Francisco and Carmen) and to employee Carlos Garcia. Historically the Respondent had a practice of giving merit or discretionary increases to individual employees who, in the judgment of the supervisors, plant manager, and the company president, deserved them because of good attendance, good attitude, or consistently high performance. There is nothing in writing which explains, limits, or in any way outlines the awarding of such merit increases. However, the Respondent's employment record form contains a code designation (A) for merit increases and this letter can be seen, from time to time, next to entries shown on the employment records of various employees.

Éntries on the employment record of Francisco Villalpando, designated an aluminum die caster, are as follows:

7-16-90	\$6.60 hr.	
9-16-90	6.80 hr.	A
12-16-90	7.00 hr.	A
1-2-91	7.20 hr.	E retroactive ¹⁵

Entries on J. Carmen Villalpando's employment record are as follows:

7-23-90	\$5.00 hr.	
General factory -		
trim die		
8-20-90 Breakman/trim	5.20 hr.	B^{16}
op trim die		
8–20–90 Die caster -	5.40 hr.	В

¹⁵ In the Respondent's code for changes, "E" stands for a cost-of-living increase.

Alum. die cast		
9-20-90	5.50 hr.	В
10-20-90	5.60 hr.	В
11-20-90	5.70 hr.	В
12-20-90	5.80 hr.	В
1-2-91	6.05 hr.	E retroactive
1-20-91	6.15 hr.	В
2-20-91	hr. B	

Some of the entries on Carlos Garcia's employment record are as follows:

1-1-90	\$5.85 hr.	E
2-5-90	6.05 hr.	В
4-30-90	6.20 hr.	A
8-6-90	6.45 hr.	A
1-2-91	6.60 hr.	E retroactive
3-22-91 terminated -		
falsifying information ¹⁷		

Balma testified that he hired Francisco Villalpando, who he knew to be an experienced die caster, at a rate considerably above the normal hiring in rate at the factory. At the time of hire, he concluded an agreement with Francisco that his wage rate would be increased in 20-cent increments until it reached an agreed upon level. The above-noted increases on his record reflect the fact that this agreement was carried out by the Respondent. With respect to Garcia, Balma was unable to explain the nature of the 25-cent merit increase awarded on August 6, 1990. Balma called Garcia "the worst employee we ever had. He had an atrocious record," and termed the increase in question a "mistake."

The Respondent placed in evidence a document, dated March 1, 1990, setting forth wage rates to be paid to various classes of employees. The document recited a starting rate for full-time factory employees of \$5 an hour. Upon the transfer of general factory, trim press, or secondary employees to the position of die caster, there would be an immediate 20-cent increase, followed by increases of 10 cents per month until the employee reached \$5.40, and then 20 cents more each month until the employee reached the maximum of \$6 an hour. For trim press operators, there was a 20-cent increase immediately upon promotion to trim press/break die casters and 10 cents a month thereafter up to a maximum of \$5.50 an hour. For trim press/break die casters who were promoted to die caster, there was a 20-cent increase immediately upon promotion and an additional 10 cents a month up to a \$6-a-month maximum. However, Catherine Mooney, Respondent's controller, testified that the Company did not strictly adhere to the provisions of its announced wage progression system and affirmed that some employees were actually making more than the maximum amounts recited in the document because general wage increases had been granted. She noted that the Company could and did make private agreements in order to obtain the services of experienced applicants and that, in effect, there was no real maximum wage rate for any job classification, notwithstanding the figures recited in the published policy statement. Wages

¹⁶ In the Respondent's code for changes, "B" stands for promotion

¹⁷ According to Garcia's personnel record, he was fired because he told the Company that he was absent due to illness when in fact he was in iail.

actually received by employees, as reflected in payroll records in evidence, bear out this statement.

II. ANALYSIS AND CONCLUSIONS

This case in its entirety must be viewed against a background of longstanding antiunion animus on the part of this Respondent, 18 including its proclivity to make unlawful unilateral changes in wages, hours, and terms and conditions of employment, the self-same conduct which has been alleged in this case. It is also particularly noteworthy that the actions of the Respondent litigated in this case were performed in the face of a decree of the court of appeals which had been issued only a few months before the Respondent embarked on the course of conduct at issue herein.

The admitted unilateral subcontracting of unit work alleged to be a violation of the Respondent's duty to bargain collectively with the Union cannot be justified on the basis of past practice. At no time in its corporate history did the Respondent ever accompany the subcontracting of unit work with a relocation of the custom-made tools necessary to perform that work. Other instances of subcontracting relied on by the Respondent in support of its past practice argument silk screening and painting-involved work which the Respondent did not have the in house capacity to perform. Such was certainly not the case with regard to the drilling of holes in refrigerator door hinges. Its past practice was to drill such holes; it interrupted that practice because it wanted to save money on the operation. It is disingenuous for the Respondent to argue that a saving on labor costs was not the motive for subcontracting because, at 8 cents a hinge, the subcontractor was charging the Respondent more than its own in house cost of production, namely 5 or 6 cents per hinge. The precise problem at issue in this case is not a comparison of subcontractor cost with in house production cost at a straight time hourly rate but a comparison with the Company's cost if the operation were to be performed at time-anda-half for overtime. Simple mathematics indicates that it would cost the Respondent more to drill hinges in its own plant at overtime premium rates than to subcontract the work at 8 cents a hinge. Balma admitted as much to union negotiators at a bargaining session. He also told a group of employees who protested the removal of the drilling machine that the Company was doing so in order to avoid paying overtime. The fact that no employees were laid off or suffered a reduction in their workweek-even if true-is irrelevant. The crux of their grievance is that they lost additional overtime work that they might have enjoyed if the Respondent had left the work in the plant.

Respondent claims that it was privileged to relocate the machine and the drilling work the machine was used to perform because the amount of work in question was de minimis. The Respondent's evidence was that the amount of time involved in the performance of the disputed work ranged between 56 and 100 hours. Different figures were given on different occasions. Assuming that 100 hours of work would have been performed at a premium rate of \$9 per hour, the subcontracting meant lost income to one or more of the Re-

spondent's employees of an estimated \$900. I do not regard this amount as de minimis. 19

The Supreme Court long ago held that an employer has a duty to bargain collectively over a decision to subcontract unit work and over the effects of such subcontracting. This duty includes the duty to advise a union in advance of making a decision to subcontract and to negotiate with it in good faith to impasse before taking any action. Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964). The facts of this case do not fall within any exception to the Fibreboard rule which were carved out in subsequent cases. A business justification to unilateral subcontracting of work is no defense where, as here, the purpose of the subcontracting was to reduce labor costs. Connecticut Color, 288 NLRB 699 (1988). The work subcontracted in this case was a minor item in the Respondent's production schedule and involved one of the Respondent's smaller customers, a customer that it no longer serves notwithstanding the effort it assertedly made to meet the customer's exacting delivery target.²⁰ Manifestly, the subcontracting in question did not involve a significant change in the scope and direction of the Respondent's enterprise. All that subcontracting in this case involved was a change in the identity of employees who were assigned to drill holes in 21,000 hinges at a speed of 250 hinges an hour. Accordingly, the subcontracting in this case falls squarely within the rule recently announced by the Board in Torrington Industries, 307 NLRB 809 (1992). Hence, by subcontracting drilling work and removing from its plant to the premises of a subcontractor a machine designed to be used in the performance of subcontracted work, without either notifying the union in advance or bargaining with it in good faith to impasse over its contemplated action, the Respondent herein violated Section 8(a)(1) and (5) of the Act.21

Continued

¹⁸ In *Acme III*, Judge Linton held, with Board approval, that he would infer some slight animus from the matters litigated in *Acme I*, even though they were removed in time from the violations alleged in his case.

¹⁹ In making this calculation I am only attempting to arrive at a generalized idea of the amount of money involved in the disputed work in order to evaluate the Respondent's de minimis argument. Any precise figure would have to be determined in a supplemental proceeding if it cannot be agreed on by the parties.

²⁰ I do not credit one of the Respondent's many business justifications for subcontracting, namely, that it was faced with an emergency generated by Admiral's request for an immediate delivery of door hinges. A production schedule for the drilling of these hinges, placed in evidence by the General Counsel, shows no consistency at all in the assignment of this work to employees. Days and, in some instances, weeks went by when no drilling at all was performed. Once the subcontractor completed the work in question in early December, the drill was never used again, either by the Respondent or by the subcontractor. The only evidence of customer pressure was self-serving hearsay on the part of Balma, a witness whom I have discredited. There is nothing in writing, either from Admiral or anyone else, substantiating the claim of emergency brought on by customer pressure for immediate delivery, nor is there any precision even in Balma's testimony as to the nature of the pressure and exactly how many door hinges the customer wanted to be shipped by any given date. Accordingly, I place no reliance on this factor in analyzing the Respondent's business justification for subcontracting.

²¹ The cases relied on by the Respondent to support its position that it was justified in subcontracting work without notifying or bargaining with the Union involved, for the most part, instances of subcontracting by employers who have a long and mature bargaining relationship with the unions in their respective plants, including management-right clauses in a long series of contracts. In this instance,

With regard to a retroactive across-the-board wage increase of 15, 20, and 25 cents per hour, which the Respondent granted effective January 2 or 3, 1991, the Respondent justifies its action on the alternative theories that the Union consented to these increases or that it did not consent to them by bargaining to impasse over the subject. Alternative pleadings may have some place in administrative practice but not in evaluating the good faith of an employer's action. At the time these increases were announced, the Union and the Respondent were apart at the bargaining table on the amounts which employees should receive on an interim basis pending completion of negotiations, as well as the manner in which any increases should be spread around. The Union proposed increases in eight pay grades, to be spread within each pay grade to equalize, or nearly equalize, the wages received by each employee in each grade. The Respondent proposed that there be seven pay grades and that employees in each grade receive the same increase. However, it was willing to give larger amounts to employees in the lower grades than to those in the higher pay grades. Moreover, the unilaterally instituted wage increase which the Respondent announced to its employees on January 16 contained an exemption for employees who had worked less than 90 days for the Company. No such exemption was ever even discussed at the bargaining table, much less agreed upon. Accordingly, there is absolutely no foundation in the record for any suggestion that the Union agreed to what the Respondent did.

There is also no factual basis for claiming that the parties herein were at impasse when the wage increase was announced.²² Even if the history of this bargaining could define an irreconcilable disagreement over contract issues, the Respondent herein would not be privileged to rely upon the Board's impasse doctrine to justify moving ahead unilaterally. Impasse can only be legitimately claimed if an employer has bargained in good faith and has not committed unfair labor practices which have tainted its claim of good faith. Taft Broadcasting Co., 163 NLRB 475 (1967); United Contractors, 244 NLRB 72 (1979). In this case, the Respondent has been guilty of repeated violations of Section 8(a)(5) of the Act going back to 1987, first by refusing to bargain at all with the Union (see Acme II) and then by making several unilateral changes in wages and terms and conditions of employment (see Acme III). In light of this history, it cannot claim benefit of any impasse in bargaining since its own intransigent and illegal behavior, including the unilateral subcontracting of unit work involved in this case, would have contributed to any stalemate. Accordingly, by unilaterally granting wage increases in January 1991, the Respondent herein again violated Section 8(a)(1) and (5) of the Act.

Merit increases have long been held to be a mandatory subject of bargaining. NLRB v. Katz, 369 U.S. 736 (1962).

There is no claim by anyone that, in granting a series of increases to the Villalpandos and to Garcia that the Respondent bargained with the Union, either as to the granting of an increase or as to the amount. The Respondent's excuse for doing so was that these increases were granted in accordance with past practice. In the case of Garcia, its other defense was that the 25-cent increase he received was a mistake, since he was a poor employee and did not really merit anything.

Even if an employer has had a past practice of granting wage increases of a given amount at certain times, to the extent that any particular wage increase amounts to an exercise of its discretion rather than an expected practice, an employer must notify the bargaining agent and offer to bargain over both the granting of the increase and the amount. Peele Co., 289 NLRB 113 (1988); Colorado-Ute Electric Assn., 295 NLRB 607 (1989). The Union herein has been the duly designated bargaining agent of the Respondent's production and maintenance employees since it won a representation election in 1987, so the Respondent's duty to bargain commenced at that time. Anything it has done since its duty to consult and negotiate began cannot be the basis of a claim of lawful past practice since it arose in derogation of that duty, and no individual contract concluded with an employee in derogation of an on-going duty commencing 1987 can provide the Respondent with an excuse for granting individual merit or discretionary increases.

In light of Mooney's testimony about the flexibility of the Respondent's wage scales and practices, there is no basis for the Respondent to claim factually that it had any past practice with respect to granting individual wage increases. Since its wage pattern was "all over the lot," to use Salzman's expression, it is clear that wages were individually set throughout the bargaining unit, notwithstanding an occasional grant of an across-the-board increase applicable to everyone, as found in Acme III. In the case of Francisco Villalpando, it was admitted that the Respondent negotiated an individual deal with him at the time of his hire in 1990 which provided for individual increases separate and apart from any which might be granted to any other employee. If collective bargaining means anything, it means that employers may not cut separate deals with individual employees without the union's consent, since it is the union's prerogative to bargain on behalf of every employee in the unit. Francisco Villalpando's increases were designated as merit increases on his employment record and at least two of them were awarded within the 10(b) period. Such increases cannot be justified on the basis of actions the Respondent previously took which it had no right to take.

Carmen Villalpando's multiple and rapid pay increases followed no discernible objective pattern and were, for the most part, discretionary in character. As such, they could not be lawfully granted before the Union was consulted and given an opportunity to negotiate. With regard to Garcia, it is frivolous for the Respondent to contend that he was not given a merit increase or that the increase he received was a mistake, since Garcia's record designated the disputed 25-cent raise as a merit increase and since he had received another increase a few months before which was similarly designated in his employment record. Whether or not he deserved the increase is immaterial and one should not dwell on the term "merit" in addressing its propriety under the Act. The raise was an

the Board is confronted with an example of subcontracting during negotiations over an initial contract by an employer who spent years trying to avoid any obligation to bargain at all. In *Central Maine Morning Sentinel*, 295 NLRB 367 (1989), the Board noted that both it and the courts scrutinize bargaining where there is a change in terms of employment during initial contract negotiations, recognizing that such changes can jeopardize the efficacy of a newly certified union

²²The parties continued to negotiate following the unilateral establishment of the January 1991 wage increases and met several times for this purpose throughout 1991.

individually granted discretionary raise and, as such, fell within the rule of *Katz*. Accordingly, by granting merit or individually negotiated discretionary increases without consulting the Union and giving it an opportunity to bargain, the Respondent herein violated Section 8(a)(1) and (5) of the Act. I so find and conclude.

CONCLUSIONS OF LAW

- 1. Acme Die Casting, a Division of Lovejoy Industries Incorporated is now and at all times material herein been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 2. United Electrical, Radio & Machine Workers of America (UE) is a labor organization within the meaning of Section 2(5) of the Act.
- 3. All full-time and regular part-time production and maintenance employees employed by the Respondent at its facility located at 3610 Commercial Avenue, Northbrook, Illinois, excluding all office clerical employees, technical employees, tool and die makers, managerial employees, professional employees, confidential employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.
- 4. At all times material herein, the Union has been the exclusive collective-bargaining representative of employees employed in the unit found appropriate in Conclusion of Law 3 for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.
- 5. By unilaterally subcontracting drilling work and relocating a machine used to perform said work to the premises of the subcontractor; by unilaterally granting across-the-board pay increases to bargaining unit employees; and by unilaterally granting merit or discretionary wage increases to individual employees, the Respondent violated Section 8(a)(1) and (5) of the Act.
- 6. The aforesaid unfair labor practices have a close, intimate, and substantial effect on the free flow of commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent herein has engaged in certain unfair labor practices, I will recommend that it be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. Because the violations of the Act by this employer, as found in this and in previous Board cases, are repeated and pervasive and evidence on its part an attitude of total disregard for its statutory obligations, I will recommend to the Board a so-called broad 8(a)(1) remedy designed to suppress all violations of that section of the Act. Hickmott Foods, 242 NLRB 1357 (1979). I will recommend that the Respondent be required to make whole its employees for any loss of earnings which they may have sustained by reason of the unlawful subcontracting found herein, in accordance with the F. W. Woolworth formula,²³ with interest at the rate prescribed by the Tax Reform Act of 1986 for the overpayment and underpayment of income tax. New Horizons for the Retarded, 283 NLRB 1173 (1987). I will further recommend to the Board that the Respondent be placed under yet another bargaining order, requiring it to recognize and bargain collectively in good faith with the Respondent. Because the Respondent has yet to comply with the duty to bargain in good faith that was imposed upon it in *Acme II*, I will recommend that the certification of the Union be extended for a period of 1 year, beginning with the date that the Respondent ceases to violate Section 8(a)(5) of the Act and starts to bargain with a view toward reaching a contract. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). I also recommend that any further violations of Section 8(a)(5) of the Act committed by this Respondent be prosecuted as contempt of the outstanding decree of the United States Court of Appeals for the Seventh Circuit, not in just another unfair labor practice complaint leading to another bargaining order.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁴

ORDER

The Respondent, Acme Die Casting, a Division of Lovejoy Industries Incorporated, Northbrook, Illinois, its officers, agents, supervisors, attorneys, successors, and assigns, shall

- 1. Cease and desist from
- (a) Unilaterally subcontracting bargaining unit work or unilaterally transferring to subcontractors machinery used in performing bargaining unit work.
- (b) Unilaterally granting either across-the-board or merit increases to bargaining unit employees; provided that nothing herein shall be deemed to require the Respondent to cease giving effect to any wage increases of any kind that it has granted heretofore.
- (c) Refusing to recognize or bargain collectively in good faith with United Electrical, Radio & Machine Workers of America (UE) as the exclusive collective-bargaining representative of all the full-time and regular part-time production and maintenance employees employed at its Northbrook, Illinois facility, excluding office clerical employees, technical employees, tool and die makers, professional, managerial, and confidential employees, guards, and supervisors as defined in the Act.
- (d) By any other means or in any other manner interfering with, restraining, or coercing employees in the exercise of the rights' guaranteed to them by Section 7 of the Act.
- 2. Take the following affirmative actions necessary to effectuate the policies of the Act.
- (a) Recognize the Union on resumption of bargaining in good faith and for 1 year thereafter as if the initial year of certification had not expired.
- (b) Recognize and, upon request, bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of the employees in the above-designated bargaining unit.
- (c) Make whole any employees for any loss of pay or benefits suffered by them by reason of the unlawful subcontracting found herein, in the manner described above in the remedy section.

²³ F. W. Woolworth Co., 90 NLRB 289 (1950).

²⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- (d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (e) Post at the Respondent's Northbrook, Illinois plant copies, in English and Spanish, of the attached notice marked "Appendix." ²⁵ Copies of the notice, on forms provided by

- the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."